Supreme Court, U.S.
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SUPREME COURT NO. 85-110

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1985

GEORGE A. BINT,

Claimant-Appellant,

v.

CREATIVE FOREST PRODUCTS, Employer, and MARYLAND CASUALTY COMPANY, Surety,

Defendants-Respondents.

EDWIN W. DALTON,

Claimant-Appellant,

v.

CREATIVE FOREST PRODUCTS, Employer, MARYLAND CASUALTY COMPANY, Surety, and STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND,

Defendants-Respondents.

APPELLANTS' REPLY TO APPELLEES'

MOTION TO DISMISS

BEST AVAILABLE COPY

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ARGUMENT

Appellees Creative Forest Products and Maryland Casualty Company have filed a Motion to Dismiss on the grounds that Appellants have not raised a substantial Federal question. The substance of Appellees' argument is that they believe the Idaho Statute in question, Idaho Code §72-439, is constitutionally sound, and meets the "rational basis" test. Appellees' argument is basically an argument on the merits of the claim, rather than jurisdiction, and Appellants would therefore argue that the Motion is not well-founded.

Nevertheless, Appellants would make a few comments concerning the arguments asserted by Appellees. The focus of their argument is found on page 6 of Appellees' Brief, wherein it is stated:

> But Appellants have raised no substantial Federal question as the Idaho Supreme Court used the proper analysis mandated by this Court, and under such analysis, the Idaho Court found the statute-in-question constitutional as there were rational bases for its existence.

It appears that their argument is that any time an appellate court reviews equal protection or due process questions, and in name identifies the appropriate test, i.e., in this case, the rational basis test, and then sets forth some reasons why it believes a statute is constitutional, there is no federal question. That concept was clearly rejected in Zoebel v. Williams, 457 U.S. 55 (1982). In Zoebel, the Alaska Supreme Court recognized the appropriate standard of review, i.e., the rational basis test. The Alaska Supreme Court, in upholding the Alaska statute in Zoebel proposed

three different rationalizations or reasons supporting the statute in question. However, this Honorable Court, on appeal, found that the proferred purposes justifying the classifications were not rationally related to the purposes of the statute. Thus, a simple recognition of the appropriate standard to be applied, and the offering of some proposed justification for a statute does not insulate from examination by this Honorable Court.

Ironically, the Idaho Supreme Court itself, in Jones v. State Board of Medicine, 97 Idaho 859, 870-71, 555 P.2d 399, 410-11 (1976), pointed out the dangers of a cursory review in constitutional circumstances such as this. Therein, the Idaho Court stated the following:

[We] believe that the standard to be applied in testing the classification created by the challenged legislation is one of lesser scrutiny. Appellants argue that the classification created by the legislation must be judged by the standard set forth in McGowan v. Maryland, supra, which broadly states that "a statutory discrimination will not be set aside if any state of facts may be conceived to justify it." (Emphasis supplied). See also, Evans v. Idaho State Tax Commission, 95 Idaho 54, 501 P.2d 1054 (1972). On the other hand, respondents assert that the classification created by the legislation must be testified by the standard of Reed v. Reed, supra, i.e., according to whether it "rests on some ground of difference having a fair and substantial relation to the object of the legislation." See also, Thompson v. Hagan, supra. When the test set forth in McGowan has been utilized, the result has ordinarily been the removal of the court from any but the most cursory review of the challenged legislation. It invites courts to conceive purposes which would justify statutes. The validity or invalidity of discriminatory classifications may under that test depend solely upon the extent of the imagination of the reviewing court and/or its adherence to the theory of judicial restraint. See, e.g., Goesaert v. Cleary, 335 U.S. 464,

69 S.Ct. 198, 93 L.Ed. 163 (1948); Kotch v. Board of River Port Pilots Commissioners, 330 U.S. 552, 67 S.Ct. 910, 91 L.Ed. 184 (1912), nevertheless, blind adherence and over-indulgence results in abdication of judicial responsibility. It is appellant's position in the case at bar that since the legislature has declared the purpose of the subject Act and since that declaration is said and presumed to be founded on a rational factually based legislative determination, this Court is foreclosed from additional inquiry into the Act. We disagree.

This Court has found it necessary to look beyond the minimal scrutiny test of McGowan in reviewing the classification alleged to be violative of equal protection. In so doing, we have relied upon the standard set forth in F. S. Royster Guano Co. v. Virginia, supra, as quoted in Reed. That test scrutinizes the means by which the challenged legislation is said to affect its articulated and otherwise legitimate purpose.

Jones v. State Board of Medicine, 97 Idaho 870-71 (Emphasis part original and part added).

Appellants would submit that the discriminatory character of the

challenged classifications in this case are facially apparent. One of the patently arbitrary features concerning the classification between "acute" and "non-acute" diseases in Idaho Code §72-432 is a clear lack of any definition of those terms. The arbitrary nature and effect of this lack of definition is emphasized by the concurring opinion of Justice Bakes in the Idaho Supreme Court's opinion in this matter. (Appellants' Jurisdictional Statement, P. A-26). He suggests that there could be some other facts that could be developed to show that the cedar dust disease was "acute", thereby qualifying Mr. Bint and Dalton or for coverage. Thus, Justice Bakes would have the claimant go out and find another doctor who would say that the onset of these particular symptoms

were acute. Clearly, the terms "acute" and "non-acute" are relative, and, when undefined in the statute as presented in this case, deny equal protection.

Much more can be said concerning the merits of this claim and the arbitrary classifications that it establishes, as well as the irrebutable presumption that it creates. However, those points are more appropriately reserved for a brief on the merits. In closing, however, Appellants would simply like to point out a hypothetical situation, which illustrates the arbitrary and unreasonable nature of this 60 day exposure restriction.

Assume that there are three workmen in the same employment who are hired at the same time. All three began having respiratory problems over a period

of three weeks, and on the 55th day, they all three decide to see their respective family physicians. Worker A gets an appointment within three working days. Worker B gets an appointment within three working days. Worker C gets an appointment within seven working days. Worker A goes to his doctor and is diagnosed as having an occupational disease caused by his immediate employment. The physician later opines that the disease is non-acute because it came on over a three week period. Worker A's physician tells him not to return to work, and A quits on the 59th day.

Worker B sees his physician, and is told that he has the same occupational disease, but his physician later feels that it can be classified as an acute disease, in that he thinks that a three

week onset of this type of disease is rather quick. Worker B's physician tells him that he should not go back to work and Worker B quits on the 59th day.

Worker C's doctor also believes that Worker C has the same occupational disease, and tells him to quit work. Worker C quits on the 63rd day. His doctor isn't quite sure whether the disease is acute or non-acute, and doesn't feel like he can express an opinion.

Under this scenario, all three workers are situated the same situation as far as the disease is concerned. However, Worker A loses out because he has a non-acute disease and was not exposed for 59 days. Worker B is covered because, although he worked less than 60 days, his disease was acute. Worker C

also gets benefits, and while he has the same disease as Worker A, it doesn't really matter whether his disease is acute or non-acute, because he worked 60 days, and he gets benefits. Such a result is neither reasonable nor rational, and the circumstances of these particular consolidated cases clearly point this out.

In Eisenstadt v. Baird, 405 U.S. 438, 447 (1972), this Honorable Court stated:

> The equal protection clause of that amendment [Fourteenth Amendment] does, however, deny to states the power to legislate that different treatment be accorded to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.

Appellants believe that a substantial federal question has been presented to this Honorable Court, and would request that the matter be heard.

Respectfully submitted this 26th day of August, 1985.

GOICOECHEA LAW OFFICE,
CHARTERED

By: /s/
Lynn M. Luker

CERTIFICATE OF SERVICE

STATE OF IDAHO)
: ss.
County of Ada)

I, LYNN M. LUKER, a member of the bar of the United States Supreme Court, hereby certify that a copy of the foregoing APPELLANTS' REPLY BRIEF TO APPELLEES' MOTION TO DISMISS was served on the following people by depositing it in the United States Mail, with first class postage prepaid on the 26th day of August, 1985:

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/s/
LYNN M. LUKER

STATE OF IDAHO)
: ss.
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On this 16th day of August, 1985, before me, a Notary Public for the State of Idaho, personally appeared LYNN M. LUKER, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

/s/
Notary Public for Idaho
Residing at Boise
My Commission Expires: